U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Miami Date: OCT 18 2000

IN RE: Applicant: [redacted]

Application: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This statute provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States pursuant to section 212(a)(2)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(C), because he had reason to believe that the applicant is or has been an illicit trafficker in a controlled substance. The district director further determined that no action will be taken on his application for waiver of grounds of inadmissibility (Form I-601) because the applicant was not convicted of petit larceny, a crime involving moral turpitude. The district director concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on certification.

Section 212(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
>
> (C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is

or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On August 12, 1992, in Miami, Florida, Case No. [redacted] the applicant was arrested and charged with petit larceny. Upon completion of a pre-trial intervention program, a "nolle pros" was entered on the case on January 22, 1993.

2. On April 2, 1994, in Dade County, Florida, Case No. [redacted] the applicant was arrested and charged with Count 1, possession of marijuana; Count 2, possession of cocaine; and Count 3, reckless driving. On May 2, 1994, the case was reduced to unlawful possession of cannabis and transferred to the County Court under Case No. [redacted] On July 12, 1994, the court entered a "nolle prosse" on the case.

Despite the fact that the applicant was not convicted of the charges listed in paragraph 2 above, the district director, referring to Matter of Rico, 16 I&N Dec. 181 (BIA 1977), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because he had reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

It has been held in Matter of Rico that an actual conviction of a drug-trafficking offense or violation is not necessary to establish the ground of inadmissibility under section 212(a)(2)(C) of the Act. There are sufficient facts to support a finding that there is reason the believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance.

The arrest report (paragraph 2 above) reflects that while conducting an inventory search of the applicant's vehicle following his arrest for reckless driving on April 2, 1994, an officer discovered a clear zip lock type bag. The bag contains 16 bags of marijuana (dime bags) and 14 individually wrapped crack cocaine rock.

Generally speaking, intent to distribute is established when the controlled substance is either found on the person of the accused, or in a vehicle or boat driven or occupied by the accused, or in a dwelling where the accused resided or visited frequently. Intent to distribute may also be established by circumstantial evidence. Evidence the defendant possess drugs with the requisite intent to distribute is sufficient as a matter of law, where the drug is packaged in a manner consistent with distribution, and/or there is

evidence of distribution paraphernalia, amounts of cash, weapons, or other indicia of narcotics distribution. United States v. Franklin, 728 F.2d 994 (8th Cir. 1984). In the matter at hand, the arrest report shows that the officer found in the applicant's vehicle a clear zip lock bag containing 16 dime bags of marijuana and 14 individually wrapped crack cocaine rock.

The amount of marijuana and cocaine found, and the fact that they were packaged in a manner consistent with distribution, are reasons to conclude that they are for distribution or trafficking. Although the record in this matter indicates that the applicant was not convicted of the charges, we find that there is sufficient, reasonable, substantial, and probative evidence to support the district director's conclusion that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act, whether or not he was actually convicted. Matter of Rico, supra.

There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act based on trafficking in a controlled substance. Further, the applicant was offered an opportunity to submit evidence in opposition to the district director's finding of inadmissibility. No additional evidence has been entered into the record.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The director's decision is affirmed.